

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 253X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–  
IN COLORADO AND WHARTON COUNTIES, TX

Decided: September 15, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.3-mile line of railroad known as the Chesterville Industrial Lead, extending from milepost 52.9 near Chesterville to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, TX. Notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8928-29). By decision and notice of interim trail use or abandonment (NITU) served on March 24, 2008, the proceeding was reopened and a 180-day period was authorized for Metropolitan Transit Authority of Harris County, TX (Metro), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.

On September 11, 2008, Metro requested an extension of the negotiating period until October 31, 2008. Metro states that UP and Metro are making good progress negotiating the interim trail use/rail banking agreement but they do not believe that it will be signed by the September 14, 2008 deadline. Metro also states that it is authorized to state that UP consents to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>1</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to October 31, 2008.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>1</sup> See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. Metro's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until October 31, 2008.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary